

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**KIMBERLY E. VANALSTINE**

**Chapter 7**

**Debtors**

**BK 02-32445**

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**HABBO G. FOKKENA,**  
**United States Trustee**

**Plaintiff,**

**vs.**

**Adv. No.**

**KIMBERLY E. VANALSTINE**

**Defendants.**

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**COMPLAINT TO REVOKE DISCHARGE**

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Habbo G. Fokkena, United States Trustee, Plaintiff, by and through his undersigned attorney, Michael R. Fadlovich, for his complaint against defendant Kimberly E. Vanalstine, states and alleges that:

1. This complaint is filed under FED. R. BANKR. P. 7001(4) and seeks an order revoking the debtor's discharge pursuant to 11 U.S.C. § 727(d)(2).
2. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and FED. R. BANKR. P. 4004. This proceeding is a core proceeding.
3. The United States Trustee has standing to commence this adversary proceeding pursuant to

28 U.S.C. § 586(a) and 11 U.S.C. §§ 307 & 727(d).

4. The debtor, Kimberly E. Vanalstine, commenced this bankruptcy case on July 1, 2002, by the filing of a voluntary petition under chapter 7 along with a full set of bankruptcy schedules. Mary Jo A. Jensen-Carter was appointed chapter 7 trustee.

5. On October 8, 2002, the debtors received from this court a general discharge under 11 U.S.C. §727(a) of all her debts. The bankruptcy case had not been closed at the time this complaint was prepared and filed.

6. At the time the debtor's original chapter 7 filing, she may have been entitled to income tax refunds from calendar year 2002. The tax refund was property of the estate as provided for in 11 U.S.C. §541(a)(5).

7. The chapter 7 trustee, Mary Jo A. Jensen-Carter, moved the court for an order to require the defendant to turn over copies of her state and federal income tax returns and her tax refunds. On September 24, 2003, the court granted the turnover motion and ordered the defendant to turn over copies of her tax returns, as well as any tax refund, within five days. See Order dated September 24, 2004, Docket #10. See also, July 14, 2004, affidavit of Mary Jo A. Jensen-Carter, including copy of the order, attached hereto. The court's order required the debtor (defendant) to turn over both the tax returns and the tax refund within five days. The order also required the Debtor to pay the trustee \$500.00 for attorney fees for bringing the turnover motion. The five day deadline for compliance by the debtor ended on September 29, 2003.

8. The defendant failed to turn over the tax returns and refunds and further failed to pay the trustee \$500.00 in attorney fees, all as required by the court's order.

9. Pursuant to 11 U.S.C. §§ 541, the income tax refunds due to defendant from the taxing

authorities were at all times property of the bankruptcy estate.

10. By refusing to turn over the tax returns and refund, the defendant acquired property of the estate, or acquired property that would have been property of the estate, and knowingly and fraudulently failed to report the acquisition of that property and further failed to turn the property over to the bankruptcy trustee. The Defendant further failed to obey an order of this court.

11. Under 11 U.S.C. § 727(d)(2), the court shall revoke a debtor's discharge if the debtor (defendant) acquire property of the estate and fails to deliver or surrender that property to the trustee. Under §727(d)(3) and §727(a)(6), the shall also revoke a debtor's discharge if the debtor refused to obey a lawful order of the court. Here, cause exists to revoke the discharge under either alternative.

WHEREFORE, the Plaintiff requests that this Court enter judgment revoking the discharge of the defendant herein, Kimberly E. Vanalstine, together with such other and further relief as the Court seems just.

Dated July 20, 2004

HABBO G. FOKKENA,  
UNITED STATES TRUSTEE  
REGION 12

BY: e/Michael R. Fadlovich  
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## **VERIFICATION**

I, Michael R. Fadlovich, a trial attorney for the United States Trustee, the petitioner herein, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on July 20, 2004

e/Michael R. Fadlovich

Michael R. Fadlovich